January 24, 2005

The Honorable William F. Schenck
Greene County Prosecuting Attorney
61 Greene Street, 2nd Floor
Xenia, Ohio 45385

SYLLABUS: 2005-002

1. If, in its tax budget adopted and submitted in accordance with R.C. Chapter 5705, the board of education of a school district proposes to levy, for purposes of permanent improvements, the amount of property tax allocated to the school district within the 10-mill limitation that, in the previous year, was levied for operating expenses, the county budget commission is not empowered to disapprove or modify the levy, provided that the levy was properly authorized and the amounts to be levied are clearly required by the school district's budget. This is the case even if, because of the operation of R.C. 319.301, the school district will then levy for operating expenses 20 mills of tax outside the 10-mill limitation, and the total amount of property taxes levied upon the taxpayers for school purposes will increase from the previous year.

2. If the board of education of a school district proposes to change its levy within the 10-mill limitation in a manner that will result in an increase in the amount of real property taxes levied by the board in the tax year in which the change takes effect, the board of education must hold a public hearing and follow the other procedures prescribed by R.C. 5705.314.

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January 24, 2005

OPINION NO. 2005-002

The Honorable William F. Schenck
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Xenia, Ohio 45385

Dear Prosecutor Schenck:

We have received your request for an opinion concerning the authority of the county budget commission to approve or deny the budget request of a school district to levy, for purposes of permanent improvements, 3.95 mills of property tax within the 10-mill limitation, which is the amount of inside millage that was levied for operating expenses in the previous year. Because of the operation of R.C. 319.301, the school district will then levy 20 mills outside the 10-mill limitation for operating expenses, and the total amount of property taxes levied upon the taxpayers for school purposes will increase from the previous year.[1] For the reasons that follow, we conclude that the school district's proposal is authorized by statute and the county budget commission is not empowered to disapprove or modify the requested levy of inside millage, provided that the levy was properly authorized and the amounts to be levied are clearly required by the school district's budget.

Background

In the situation with which you are concerned, the school district has been allocated 3.95 mills of taxes within the 10-mill limitation, commonly referred to as "inside millage." These are taxes that need not be approved by the voters. In addition, the voters have approved 26.30 mills of taxes outside the 10-mill limitation ("outside millage") for the use of the school district.

The district asked the voters for approval of a permanent improvement levy in November of 2003 and again in March of 2004, and both levy requests were turned down. In November of

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[1] The 10-mill limitation is established in Ohio Const. art. XII, § 2 and R.C. 5705.02. Ohio Const. art. XII, § 2 provides that property may not be taxed "in excess of one per cent of its true value in money for all state and local purposes" except by approval of the voters or provision of municipal charter. R.C. 5705.02 prohibits property taxes in excess of 10-mills, "except for taxes specifically authorized to be levied in excess thereof."

2004 the school district asked the voters for a 2-mill bond retirement levy, which was also rejected.

In its budget proceedings for the fiscal year beginning in July of 2004, the school district asked that its 3.95 mills of inside millage be applied to permanent improvements, provided that the voters approved no additional levy before the budget took effect. Because no additional levy was approved, this was the school district budget that was before the county budget commission, in accordance with the budget procedure applicable to school districts. *See* R.C. 5705.28; R.C. 5705.29; R.C. 5705.30; R.C. 5705.31.

We are not able, by means of this opinion, to make findings of fact or to determine the rights of particular parties. *See, e.g.,* 2004 Op. Att'y Gen. No. 2004-022 at 2-186. Therefore, this opinion does not make determinations regarding the validity or effectiveness of particular actions taken with regard to the matter you have described. Rather, this opinion discusses general principles of law that may be applied to specific circumstances as appropriate.

School district property tax levies

In order to answer your question, it is helpful to review the basic principles governing property taxation for school districts. Ohio law permits taxation of up to 10 mills (one percent) of the value of property without the approval of the voters, and taxation in excess of that amount upon the approval of the voters. *See* R.C. 5705.02-.07; *see also, e.g.,* R.C. 5705.194; R.C. 5705.21; note 1, *supra*. The purposes for which tax levies within the 10-mill limitation may be used are set forth in R.C. Chapter 5705. The taxing authority of each subdivision (including the board of education of a school district, *see* R.C. 5705.01(A) and (C)) may have, within the 10-mill limitation, a general levy for debt charges, a general levy for current expenses, and certain special levies. R.C. 5705.04. The general levy for current expenses is used to provide a general operating fund derived from taxation "from which any expenditures for current expenses of any kind may be made." R.C. 5705.05. The term "current expenses" or "[c]urrent operating expenses" is defined to mean "the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision." R.C. 5705.01(F). Nonetheless, R.C. 5705.05 permits a subdivision to include in the general levy for current expenses the amounts required for carrying into effect any of the general or special powers granted to the subdivision by law, including the acquisition or construction of permanent improvements and the payment of judgments, but excluding certain road and bridge expenses and the payment of debt charges. R.C. 5705.05; *see also* R.C. 5705.09 and R.C. 5705.10 (funds of a subdivision).

R.C. 5705.05 states that, "[w]ithout prejudice to the generality of the authority to levy a general tax for any current expense," in the case of a school district, the general levy shall include "the amounts necessary for tuition, the state teachers retirement system, and the maintenance, operation, and repair of schools." Notwithstanding the mandatory tone of the word "shall," courts have concluded that, in determining that the purposes mandated by R.C. 5705.05

are met, it is appropriate to consider both the general levy for current expenses and also voted levies and other moneys available to the governmental unit. Therefore, it is not necessary to use inside millage for a particular purpose included under R.C. 5705.05 if funds for that purpose are available from other sources. *See Village of South Russell v. Geauga County Budget Comm'n*, 12 Ohio St. 3d 126, 465 N.E.2d 876 (1984). Accordingly, the required school operating and maintenance funds might be obtained from sources other than the general levy for current expenses.

Special levies within the 10-mill limitation, authorized without the vote of the people, may include "[a] levy for any specific permanent improvement which the subdivision is authorized by law to acquire, construct, or improve, or any class of such improvements which could be included in a single bond issue." R.C. 5705.06(A). Thus, a school district is authorized to adopt a permanent improvement levy within the 10-mill limitation, without the approval of the voters. It is clear, accordingly, that a school district is permitted to use inside millage to obtain moneys to fund permanent improvements. *See* Susan C. Hastings et al., *Ohio School Law* § 40:13 (2004-2005 ed.) ("[u]nless unlevied millage is available within the ten-mill limitation, the imposition of such a special levy will reduce the general levy for current expenses in a like amount").

By statute, school districts are guaranteed a minimum amount of inside millage, as provided in R.C. 5705.31(D).[2] The first sentence of R.C. 5705.31(D) allocates the inside millage

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[2] R.C. 5705.31 states, in part:

> The [county budget] commission shall ascertain that the following levies have been properly authorized and, if so authorized, shall approve them without modification:
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> . . . .
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> (D) Except as otherwise provided in this division, a minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or taxing unit, which shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen-mill limitation to such subdivision or taxing unit during the last five years the fifteen-mill limitation was in effect unless such subdivision or taxing unit requests an amount requiring a lower rate. Except as provided in section 5705.312 [5705.31.2] of the Revised Code, if the levies required in divisions (B) and (C) of this section for the subdivision or taxing unit equal or exceed the entire minimum levy of the subdivision as fixed, the minimum levies of the other subdivisions or taxing units shall be reduced by the commission to provide for the levies and an operating levy for the subdivision. Such additional levy shall be deducted from the minimum levies of each of the other subdivisions or taxing units, but the operating levy for a

according to a formula based on the average inside millage levies for current expenses and debt service in effect during the last five years before the 10-mill limitation went into effect – that is, during the five years preceding November of 1933, a period during which a 15-mill limitation was in effect. *See Washington Local Sch. Dist. v. Scioto County Budget Comm'n*, 73 Ohio St. 3d 700, 653 N.E.2d 1212 (1995); Kimball H. Carey, *Anderson's Ohio School Law* § 5.14 (2004-05 ed.). The first sentence of R.C. 5705.31(D) guarantees a school district that was in existence during that time period a minimum amount of inside millage for current expenses and debt service, which, under R.C. 5705.04, R.C. 5705.05, and R.C. 5705.06, may include a general levy for debt charges, a general levy for current operating expenses (including the acquisition or construction of permanent improvements, but excluding the payments of debt charges), and special levies authorized by law, including levies for permanent improvements. This guaranteed inside millage cannot be reduced unless the school district requests a lower rate for a particular fiscal year. R.C. 5705.31(D); *see also Washington Local Sch. Dist. v. Scioto County Budget Comm'n; Village of Carlisle v. Warren County Budget Comm'n*, 63 Ohio St. 3d 478, 588 N.E.2d 859 (1992); *Bd. of Educ. of Strongsville City Sch. Dist. v. Lorain County Budget Comm'n*, 38 Ohio St. 3d 50, 526 N.E.2d 297 (1988); Kimball H. Carey, *Anderson's Ohio School Law* § 5.14 (2004-05 ed.).

The second sentence of R.C. 5705.31(D) provides that, if the inside millage required for debt charges, *see* R.C. 5705.31(B) and R.C. 5705.312, and for certain municipal expenses, including police and firefighter employers' contributions, *see* R.C. 5705.31(C), equals or exceeds the entire minimum levy of a municipality, the minimum levies of the other subdivisions must be reduced. The third sentence of R.C. 5705.31(D) goes into effect only upon the event of the circumstances described in the second sentence. In these limited circumstances, the third sentence prohibits the operating levy for a school district from being reduced below a figure equivalent to forty-five percent of the inside millage remaining after the levies in R.C. 5705.31(B) and (C) have been provided for. *See* 1935 Op. Att'y Gen. No. 4776, vol. II, p. 1326.

The levying of any property tax, whether inside or outside the 10-mill limitation, is subject to the following restriction set forth in R.C. 5705.341: "Nothing in this section or any section of the Revised Code shall permit or require the levying of any rate of taxation, whether within the ten-mill limitation or … in excess of such ten-mill limitation, unless such rate of taxation for the ensuing fiscal year is clearly required by a budget of the taxing district or political subdivision properly and lawfully adopted under this chapter, or by other information that must be provided … if a tax budget was waived." *See Wise v. Summit County Budget Comm'n*, 36 Ohio St. 2d 114, 304 N.E.2d 390 (1973). Thus, a tax may not be levied unless a

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> school district shall not be reduced below a figure equivalent to forty-five per cent of the millage available within the ten-mill limitation after all the levies in divisions (B) and (C) of this section have been provided for.

R.C. 5705.31 states that the provisions of division (D) are mandatory.

need for the proceeds of the tax is demonstrated. For example, if a school district's budget, adopted and submitted in accordance with R.C. Chapter 5705, indicates that no inside millage is required for operating purposes, then the school district is not permitted to levy inside millage for operating purposes.

Tax levy reduction

The school foundation program, established in R.C. Chapter 3317, provides state funds to school districts. In order to receive payments under this chapter, a school district must comply with certain requirements, including the requirement that it levy at least 20 mills for current operating expenses. R.C. 3317.01(A). The 20-mill figure includes both voted millage and any inside millage that is levied for current operating expenses. The Tax Commissioner certifies the amount of taxes levied for current expenses for the preceding tax year. R.C. 3317.021(A)(3)(a). Because the school district in question levies at least 20 mills for current operating expenses, it is eligible to participate in the school foundation program. R.C. 3317.01(A).

Pursuant to R.C. 319.301, certain taxes levied on real property (not including inside millage[3]) are subject to a reduction factor designed to produce the same number of dollars each year from the same properties, rather than allowing tax proceeds to increase with inflation. *See also* Ohio Const. art. XII, § 2a; *State ex rel. Swetland v. Kinney*, 69 Ohio St. 2d 567, 433 N.E.2d 217 (1982).[4] The reduction factor is calculated by the Tax Commissioner. R.C. 319.301; 16 Ohio Admin. Code 5703-25-45(D)(1) ("[t]he tax reduction factor shall equal the per cent by which the sums levied by each tax against the carryover property in each class of real property would have to be reduced so that the current year's taxes on carryover property equals the prior year's net taxes").

If reduction would cause the total taxes charged and payable for current expenses of a school district to be less than 20 mills, the Tax Commissioner must apply a different calculation that causes the taxes, when added to a certain portion of taxes for current expenses of joint vocational school districts that were first charged and payable in 1981 or earlier, to equal the lesser of either: (a) the sum of the rates at which those taxes are authorized to be levied; or (b) 20 mills of the taxable value of the property. R.C. 319.301(E)(2); *see* note 6, *infra*. In the case of a school district that levies at least 20 mills for current operating expenses, the statutory formula

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[3] Other exceptions include taxes levied at whatever rate is required to produce a specified amount of tax money (including an emergency levy for a school district) or an amount to pay debt charges and taxes provided for by the charter of a municipal corporation. R.C. 319.301(A)(1) and (3); 16 Ohio Admin. Code 5703-25-45(B); *see also* R.C. 5705.194.

[4] This tax reduction procedure was enacted in 1975-1976 Ohio Laws, Part II, 3182, 3194-96 (Am. Sub. H.B. 920, eff. Oct. 11, 1976) (*inter alia*, amending R.C. 319.301).

prevents the reduction of taxes for current expenses below the 20-mill level that is required for participation in the school foundation program.[5]

Under the formula set forth in R.C. 319.301, a school district that levies at least 20 mills for current operating expenses continues to receive at least 20 mills of taxes for current expenses (including both voted millage and inside millage), even if the tax reduction factor would otherwise reduce the effective tax rate below that amount. In these circumstances, any current expense proceeds within the 10-mill limitation count as part of the 20 mills, and the additional amount required to reach 20 mills comes from the voted levies which, pursuant to R.C. 319.301, are reduced less than would otherwise be the case, to bring the effective tax rate up to the guaranteed amount. R.C. 319.301; 16 Ohio Admin. Code 5703-25-45(E) ("[e]ach school district is guaranteed an effective tax rate for current expenses equal to two per cent of the taxable value of each class of real property in the district. In the case of a school district whose total tax rate for current expenses as authorized, is less than two per cent, the guarantee equals only the maximum effective rate so authorized by the voters of the district"); Kimball H. Carey, *Anderson's Ohio School Law* § 5.25 (2004-05 ed.) ("a school district in which the tax reduction factor has resulted in a decrease in the effective rate of its operating levies below 20 mills will receive a new, lower tax reduction factor bringing the total of its levies up to 20 mills"). The application of a tax reduction factor for these school district purposes may not "cause a tax to be imposed at an effective rate greater than that originally authorized for that tax by the voters of a school district." 16 Ohio Admin. Code 5703-25-45(H); *see also* R.C. 319.301.[6]

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[5] A school district that levies less than 20 mills for current operating expenses is guaranteed only the maximum effective rate authorized by the voters. 16 Ohio Admin. Code 5703-25-45(E).

[6] The tax reduction factor computed under R.C. 319.301 never permits a board of education to levy taxes outside the 10-mill limitation at effective rates greater than the rates approved by the voters. In this regard, R.C. 319.301(E) states:

> (2) If in the case of a school district other than a joint vocational or cooperative education school district any percentage required to be used in division (D)(2) of this section for either class of property could cause the total taxes charged and payable for current expenses to be less than two per cent of the taxable value of all real prperty in that class that is subject to taxation by the district, the commissioner shall determine what percentages would cause the district's total taxes charged and payable for current expenses against that class, after all reductions that would otherwise bemade under this section, *to equal*, when combined with the pre-1982 joint vocational taxes against that class, *the lesser of the following:*
>
> (a) *The sum of the rates at which those taxes are authorized to be levied;*

Consider, for example, a school district that is allocated 4 mills of inside millage, which it levies for current operating expenses. Assume that the voters have also approved levies for current operating expenses in the amount of 26 mills. Assume also that the reduction factor provided by R.C. 319.301 reduces the voted levies to an effective rate of 16 mills. In this situation, the taxpayer pays 4 mills of inside millage and an effective rate of 16 mills of voted millage, for a total of 20 mills, or 2.0 percent of the value of the taxpayer's property.

Let us suppose, however, that in the following year the school district chooses to levy its 4 mills of inside millage for permanent improvements, and not for current operating expenses. Under R.C. 319.301, the school district (which has voted 26 mills for current operating expenses) is entitled to a reduction factor that permits it to levy 20 mills for current expenses, including both inside and outside millage. Because no inside millage is available for current expenses, the school district must levy an effective rate of 20 mills of outside millage for current expenses, rather than the 16 effective mills that it levied the previous year. In order for this result to be accomplished, a different reduction factor must apply, so that the school district is permitted to levy an effective rate of 20 mills, rather than 16 mills, of its voted 26 mills. This year, the taxpayer pays 4 mills of inside millage for permanent improvements and an effective rate of 20 mills of outside millage for current expenses, for a total of 24 mills (or 2.4 percent of the value of the taxpayer's property), rather than the 20 mills paid the previous year. The taxpayer thus pays 4 mills more taxes for the school district, even though the voters did not approve any additional taxes. The result is that, in total, a greater amount of tax is levied for the school district. The taxpayers face a greater burden than they did the previous year, and the school district receives more funds. *See* Kimball H. Carey, *Anderson's Ohio School Law* § 5.14 n.13 (2004-05 ed.) ("[i]f the current inside millage is used for operating expenses, it counts toward the 20-mill 'floor.' If, however, such inside millage is allocated for permanent improvements, the effective millage for operating expenses drops below the 20-mill 'floor,' thereby requiring the 'restoration' of previously rolled-back operating millage in order to return to an effective 20 mills").[7]

> (b) *Two percent of the taxable value of the property in that class.* The auditor shall use such percentages in making the reduction required by this section for that class.

R.C. 319.301(E) (emphasis added).

[7] In neither example does the taxpayer pay the full 26 mills that the taxpayers approved. This results from the reduction factor provided under R.C. 319.301, which prevents the amount of tax levied from increasing as the value of the property increases. Further, as noted above, R.C. 319.301 never permits a board of education to levy taxes outside the 10-mill limitation at effective rates greater than the rates approved by the voters. *See* R.C. 319.301(E); 16 Ohio Admin. Code 5703-25-45(H); note 6, *supra*.

The General Assembly has acknowledged this operation of the school funding law by enacting provisions that directly address it. In 1998, the General Assembly enacted R.C. 5705.314 to govern the situation in which a school district proposes to change the usage of its inside millage and thereby increase the overall tax proceeds it receives. *See* 1997-1998 Ohio Laws, Part IV, 8655, 8692 (Am. Sub. S.B. 210, eff. Dec. 21, 1998). R.C. 5705.314 requires that, if, the board of education "proposes to change its levy within the ten-mill limitation in a manner that will result in an increase in the amount of real property taxes levied by the board in the tax year the change takes effect," it must hold a public hearing "solely on the proposal" before adopting a resolution to implement the proposal. R.C. 5705.314. The statute requires public notice of the hearing, and also notice to the auditor of the county or counties in which the school district is located. *Id*. Thus, if the board of education of a school district proposes to change its levy within the 10-mill limitation in a manner that will result in an increase in the amount of real property taxes levied by the board in the tax year in which the change takes effect, the board of education must hold a public hearing and follow the other procedures prescribed by R.C. 5705.314. Upon compliance with R.C. 5705.314, the school district is permitted to implement its proposal and change its levy within the 10-mill limitation in a manner that results in an increase in the amount of real property taxes levied by the board. *See also* Kimball H. Carey, *Anderson's Ohio School Law* § 5.14 (2004-05 ed.) ("[s]pecifically, a district which has had its operating millage reduced to the '20-mill floor' could benefit by allocating its inside millage for permanent improvements").[8]

Based upon the foregoing analysis, it appears that a proposal of the sort presented in the instant case is within the law. As discussed above, it is permissible under R.C. 5705.04 to R.C. 5705.06 and R.C. 5705.31 for a school district to choose not to use any inside millage for operating expenses. *See generally Village of South Russell v. Geauga County Budget Comm'n* (concluding that R.C. 5705.05 does not require that all inside millage moneys for current expenses be used first for the purposes enumerated in R.C. 5705.05(A) through (G), and permitting the county budget commission to take into account also the availability of a levy enacted by the voters). Further, by the enactment of R.C. 5705.314, the General Assembly has recognized the possibility that a school district might increase taxes by changing the use of its inside millage. Therefore, provided that proper procedures are followed, a school district is permitted to change the use of inside millage from operating expenses to permanent improvements and, in appropriate circumstances, thereby increase the tax burden upon taxpayers in the school district.

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[8] Not all school districts encounter the 20-mill floor. In some circumstances, the amount of voted millage for current expenses is substantial enough that, even when the standard tax reduction factor of R.C. 319.301 is applied, the amount of tax levied exceeds 20 mills. Further, if a school district does not levy at least 20 mills for current operating expenses, R.C. 319.301 does not operate to raise the district's levies to that level. *See* 16 Ohio Admin. Code 5703-25-45(E); note 5, *supra*.

Powers and duties of the county budget commission

We are presented with a situation in which a board of education seeks to change its levy within the 10-mill limitation so that taxes that, during the previous year, were levied for operating expenses are levied instead for permanent improvements. Pursuant to R.C. 319.301, the board of education is entitled to levy an effective rate of 20 mills for current expenses. Therefore, through a change in the tax reduction factor, the school district will levy an increased amount of the 20 mills from outside millage. This will result in an increase from the previous year in the amount of real property taxes levied by the board of education, as described in R.C. 5705.314. The question is whether, if a school board proposes to take this action and presents to the county budget commission a tax budget based upon this action, the county budget commission must approve the tax levy changes proposed by the board of education.

The county budget commission, created pursuant to R.C. 5705.27, receives from the county auditor tax budgets and other information submitted by the various subdivisions and taxing authorities within the county, including school districts. R.C. 5705.28; R.C. 5705.281; R.C. 5705.29; R.C. 5705.30; R.C. 5705.31. The county budget commission is responsible for reviewing these budgets, adjusting them as required by law, and certifying appropriate taxes for collection. The county budget commission must make necessary adjustments to allocate the inside millage in accordance with law. R.C. 5705.31; R.C. 5705.32. The county budget commission must also certify the estimated resources for each fund and determine the total appropriations that may be made from each fund. R.C. 5705.32; R.C. 5705.35.

In carrying out its statutory duties, the county budget commission is empowered and required to adjust levy amounts to comply with the law and, thus, to determine the tax levies that a school district may collect. R.C. 5705.31; R.C. 5705.32. As a creature of statute, the county budget commission has only the authority granted by law. *See* 1987 Op. Att'y Gen. No. 87-009 at 2-51. R.C. 5705.31 provides that the commission "shall ascertain that the following levies have been properly authorized and, if so authorized, shall approve them without modification." Among the levies that must be so approved are all levies in excess of the 10-mill limitation and the millage guaranteed to a school district pursuant to R.C. 5705.31(D). These levies are mandatory, and the county budget commission is without discretion to reduce them except as provided by statute, provided that they have been properly authorized. R.C. 5705.31(E); *see also* R.C. 5705.32 (county budget commission shall bring tax levies within limitations specified by statute, "but no levy shall be reduced below a minimum fixed by law").[9] Pursuant to R.C. 5705.341, the county budget commission may not approve any tax levy unless the amount to be

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[9] There are numerous statutes that govern the adoption and adjustment of various tax levies. *See, e.g.,* R.C. 319.302 and R.C. 323.152 (reduction in taxes); R.C. 5705.311 (determination of levy where annexed territory is not included for school purposes); R.C. 5705.312 (increasing minimum levy of municipal corporation to pay debt service); R.C. 5705.51 (indirect debt limitation). This opinion discusses only the levies at issue in the current matter.

levied is "clearly required" by the budget or other information submitted by the subdivision or taxing unit.

The Ohio Supreme Court addressed the authority of a county budget commission in these terms:

> Currently, the phrase "properly authorized," as employed in R.C. 5705.31, requires the budget commission to determine that such tax is one which the taxing authority had the power to impose, either by its own action or by vote of the people, and that the enactment of the measure imposing the tax was in compliance with statutory requirements. Additionally, the term encompasses the requirement that the budget commission determine whether any rate of taxation is clearly required by the budget of the taxing district or the political subdivision. We hold this latter consideration to include the determination of whether the funds to be derived from a levy approved for a specific purpose are indeed budgeted for that purpose.
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> . . . .
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> . . .Under this section of the tax levy law [R.C. 5705.341], the phrase "clearly required by a budget" does not require, nor grant, the authority to a budget commission to make a judgment call on the desirability of programs of the health district, or in this sense to determine the "need" of the district for the sums as set forth in the budget as submitted. The review of the budget commission of tax levies is one basically of whether there has been excessive taxation, *i.e*., will the tax generate more funds than shown to be needed within the budget of the district or subdivision, and whether the funds are budgeted for the appropriate purpose as voted by the electorate.

Village of South Russell v. Geauga County Budget Comm'n, 12 Ohio St. 3d at 132.

Thus, the county budget commission is responsible for assuring that a tax is not levied unless it is properly authorized in accordance with statutory requirements. Further, the county budget commission may not permit a school district to levy a tax that will generate more money than the amount clearly required by the school district's budget, and must make certain that a tax levied for a particular purpose is budgeted for that purpose. However, the county budget commission is not empowered to evaluate the wisdom of the school district's budget or to exercise judgment regarding the desirability of the expenditures included in the budget.

As discussed above, it appears that a proposal of the sort presented in the instant case is within the law. Provided that proper procedures are followed, a school district is permitted to change the use of inside millage from operating expenses to permanent improvements and, in appropriate circumstances, thereby increase the tax burden upon taxpayers in the school district. The county budget commission is not empowered to prevent a school district from implementing a change of this sort. We conclude, therefore, that if, in its tax budget adopted and submitted in

accordance with R.C. Chapter 5705, the board of education of a school district proposes to levy, for purposes of permanent improvements, the amount of property tax allocated to the school district within the 10-mill limitation that, in the previous year, was levied for operating expenses, the county budget commission is not empowered to disapprove or modify the levy, provided that the levy was properly authorized and the amounts to be levied are clearly required by the school district's budget. This is the case even if, because of the operation of R.C. 319.301, the school district will then levy for operating expenses 20 mills of taxes outside the 10-mill limitation, and the total amount of property taxes levied upon the taxpayers for school purposes will increase from the previous year.

Concerns about the validity and appropriateness of the action taken by the school district in the instant case are based, in part, upon the fact that the most recent proposal submitted to the voters was for a 2-mill bond retirement levy, whereas the budget under consideration provides for inside millage in the amount of 3.95 mills to be expended for permanent improvements. The fact that the school district proposed to the voters a levy asking for a lesser amount of bond retirement money than the amount of inside millage for permanent improvements requested in its budget does not affect the duty of the county budget commission with regard to the review and approval of matters before it. The school district has discretion to consider various funding options and to present different types of funding proposals to its voters, but the county budget commission may consider only the proposals that the school district includes in its budget submission. If the budget shows that a certain amount of inside millage is needed for public improvements, the county budget commission must accept the school board's determination on that matter. *See Village of South Russell v. Geauga County Budget Comm'n.* The county budget commission has no statutory authority, on the basis of proposed levies that were not approved by the voters, to modify or deny the school district's levy of inside millage.

Concerns about the validity and appropriateness of the action taken by the school district in the instant case are based also upon the fact that the action may result in an increase in taxes levied for school district purposes, even thought the voters have rejected requests for tax increases. This result, however, is mandated by statute. In enacting the current language of R.C. 319.301, the General Assembly gave school funding certain priority over the property tax reduction applied to taxes levied for other purposes. The consequence is that action by a school district may result in an increase in taxes from one year to the next, even if the voters refuse to approve tax increases during that time period. *See* R.C. 319.301; R.C. 5705.314.[10] If this result is perceived as inequitable, the remedy lies with the General Assembly. *See generally Bd. of Educ. v. Fulton County Budget Comm'n*, 41 Ohio St. 2d 147, 156, 324 N.E.2d 566 (1975); *Lake Shore Elec. Ry. Co. v. Pub. Utils. Comm'n*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926).

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[10] As noted above, however, R.C. 319.301 provides only for variations in the tax reduction factor. It does not permit a board of education to levy taxes outside the 10-mill limitation at effective rates greater than the rates approved by the voters. *See* R.C. 319.301(E); 16 Ohio Admin. Code 5703-25-45(H); note 6, *supra*.

Conclusions

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. If, in its tax budget adopted and submitted in accordance with R.C. Chapter 5705, the board of education of a school district proposes to levy, for purposes of permanent improvements, the amount of property tax allocated to the school district within the 10-mill limitation that, in the previous year, was levied for operating expenses, the county budget commission is not empowered to disapprove or modify the levy, provided that the levy was properly authorized and the amounts to be levied are clearly required by the school district's budget. This is the case even if, because of the operation of R.C. 319.301, the school district will then levy for operating expenses 20 mills of tax outside the 10-mill limitation, and the total amount of property taxes levied upon the taxpayers for school purposes will increase from the previous year.

2. If the board of education of a school district proposes to change its levy within the 10-mill limitation in a manner that will result in an increase in the amount of real property taxes levied by the board in the tax year in which the change takes effect, the board of education must hold a public hearing and follow the other procedures prescribed by R.C. 5705.314.

Respectfully,

JIM PETRO
Attorney General